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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT TACOMA

7 DAVID TISDALE,

8 Plaintiff,

9 v.

10 JOHN DOE JOHNSON,

11 Defendant.

No. C11-5447 RBL/KLS

**REPORT AND RECOMMENDATION**  
**Noted For: February 3, 2012**

12 Before the Court is Plaintiff's motion to dismiss. ECF No. 16. Plaintiff David Tisdale  
13 was granted leave to proceed *in forma pauperis* in this 42 U.S.C. § 1983 civil rights lawsuit in  
14 June 2011. ECF No. 5. Defendant has filed an answer to the complaint. ECF No. 12. On  
15 December 14, 2011, filed a motion to dismiss, stating that he does not have the necessary skills  
16 to continue his case, has no funds to retain counsel, and asks that his case be dismissed. ECF  
17 No. 16. Defendant does not object to the dismissal. ECF No. 17.

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19 Accordingly, the undersigned recommends that this action be dismissed pursuant to Rule  
20 41(a)(2) of the Federal Rules of Civil Procedure.

21 **DISCUSSION**

22 Rule 41 sets forth the circumstances under which an action may be dismissed. Under  
23 Rule 41(a)(1), an action may be dismissed by the plaintiff without order of court:

24 (i) by filing a notice of dismissal at any time before service by the adverse party  
25 of an answer or of a motion for summary judgment, whichever first occurs, or (ii)  
26 by filing a stipulation of dismissal signed by all parties who have appeared in the  
action.

1 After service of an answer or a motion for summary judgment, dismissal by plaintiff must  
2 be sought under Rule 41(a)(2), which provides, in part, that:

3 Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's  
4 request only by court order, on terms that the court considers proper.

5 Therefore, once an adverse party has filed an answer or motion for summary judgment,  
6 plaintiff cannot dismiss without leave of court. *Hamilton v. Shearson-Lehman Am. Express,*  
7 *Inc.*, 813 F.2d 1532, 1535 (9th Cir.1987). As noted above, Defendant filed an answer to the  
8 complaint (ECF No. 12), but does not object to the dismissal (ECF No. 17).

### 9 CONCLUSION

10 The Court should dismiss this action without prejudice.

11 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
12 Procedure, the parties shall have fourteen (14) days from service of this Report and  
13 Recommendation to file written objections. See also Fed. R.Civ.P. 6. Failure to file objections  
14 will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140  
15 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the  
16 matter for consideration on **February 3, 2012**, as noted in the caption.  
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20 **DATED** this 11th day of January, 2012.

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23 Karen L. Strombom  
24 United States Magistrate Judge  
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